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CONFIDENTIAL SETTLEMENT COMMUNICATION PROTECTED BY FEDERAL RULE OF EVIDENCE 408 AND FOIA EXEMPTION 5

April 14, 2022

Via Email & Certified U.S. Mail

Eric J. Wilson
Deputy Director
Enforcement and Homeland Security
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

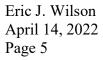
Dear Mr. Wilson:

CSX Transportation, Inc. ("CSXT") provides this initial response on behalf of Pharmacia LLC to the Notice Letter issued by the United States Environmental Protection Agency ("EPA") on March 2, 2022, regarding the Lower Passaic River Study Area (the "Notice Letter"). CSX Intermodal assumed an indemnity entered into by Motor Carrier Services when it acquired a 26-acre property in South Kearny, NJ between river mile 2.4 and 2.5 from Monsanto in 1995 (the "Kearny Facility"). Following the Third Circuit's decision in *Pharmacia Corporation v. Motor Carrier Services Corp.*, 309 F. App'x 666 (3d Cir. 2009), CSXT assumed the defense of this matter for Pharmacia, and stands in the shoes of Pharmacia here for its liability associated with the Kearny Facility pursuant to this contractual obligation. To avoid confusion, this letter will refer to "Pharmacia" as the party potentially responsible for releases at the Kearny Facility.

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Exemption (b)(7)(A)

I. EXECUTIVE SUMMARY





The Notice Letter alleges Pharmacia is "liable under Section 107(a) of CERCLA for releases or threatened releases of hazardous substances into the LPRSA." Exemption (b)(7)(A)

Exemption (b)(7)(A)

The Allocator's consultant team reviewed a massive amount of site-specific evidence that was disclosed during the allocation process, and documented their findings in the FDR.

Exemption (b)(7)(A)

* * * *

We request a meeting with EPA to answer your questions and discuss this matter further.

Sincerely,

Daniel E. Schmitt Senior Counsel, CSXT

CC: Paul Simon, Acting Regional Counsel, EPA Region 2

Sarah Flanagan, Branch Chief, New Jersey Superfund Branch (NJSUP), EPA Region 2 Office of Regional Counsel

Juan Fajardo, Assistant Regional Counsel, NJSUP

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